

The Honorable Chief Judge David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PAUL D. ETIENNE, JOSEPH J. TYSON,
THOMAS A. DALY, FRANK R.
SCHUSTER, EUSEBIO L. ELIZONDO,
GARY F. LAZZERONI, GARY M.
ZENDER, ROBERT PEARSON,
LUTAKOME NSUBUGA, JESÚS
MARISCAL, MICHAEL KELLY,

Plaintiffs,

v.

ROBERT W. FERGUSON, in his official
capacity as Governor of Washington,
NICHOLAS W. BROWN, in his official
capacity as Attorney General of
Washington, LEESA MANION, in her
official capacity as King County Prosecuting
Attorney, LARRY HASKELL, in his official
capacity as Spokane County Prosecuting
Attorney, JOSEPH BRUSIC, in his official
capacity as Yakima County Prosecuting
Attorney, RANDY FLYCKT, in his official
capacity as Adams County Prosecuting
Attorney, CURT LIEDKIE, in his official
capacity as Asotin County Prosecuting
Attorney, ERIC EISINGER, in his official
capacity as Benton County Prosecuting
Attorney, ROBERT SEALBY, in his official
capacity as Chelan County Prosecuting
Attorney, MARK NICHOLS, in his official

Case No. 3:25-cv-05461-DGE

**DECLARATION OF THOMAS A.
DALY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

capacity as Clallam County Prosecuting Attorney, TONY GOLIK, in his official Capacity as Clark County Prosecuting Attorney, DALE SLACK, in his official capacity as Columbia County Prosecuting Attorney, RYAN JURVAKAINEN, in his official capacity as Cowlitz County Prosecuting Attorney, GORDON EDGAR, in his official capacity as Douglas County Prosecuting Attorney, MICHAEL GOLDEN, in his official capacity as Ferry County Prosecuting Attorney, SHAWN SANT, in his official capacity as Franklin County Prosecuting Attorney, MATHEW NEWBERG, in his official capacity as Garfield County Prosecuting Attorney, KEVIN McCRAE, in his official capacity as Grant County Prosecuting Attorney, NORMA TILLOTSON, in her official capacity as Grays Harbor County Prosecuting Attorney, GREGORY BANKS, in his official capacity as Island County Prosecuting Attorney, JAMES KENNEDY, in his official capacity as Jefferson County Prosecuting Attorney, CHAD ENRIGHT, in his official capacity as Kitsap County Prosecuting Attorney, GREGORY ZEMPEL, in his official capacity as Kittitas County Prosecuting Attorney, DAVID QUESNEL, in his official capacity as Klickitat County Prosecuting Attorney, JONATHAN MEYER, in his official capacity as Lewis County Prosecuting Attorney, TY ALBERTSON, in his official capacity as Lincoln County Prosecuting Attorney, MICHAEL DORCY, in his official capacity as Mason County Prosecuting Attorney, ALBERT LIN, in his official capacity as Okanogan County Prosecuting Attorney, MICHAEL ROTHMAN, in his official capacity as Pacific County Prosecuting Attorney, DOLLY HUNT, in her official Capacity as Pend Orielle County Prosecuting Attorney, MARY ROBNETT, in her official capacity as Pierce County Prosecuting Attorney, AMY VIRA, in her official capacity as San Juan County Prosecuting Attorney, RICH WEYRICH, in his official Capacity as

1 Skagit County Prosecuting Attorney, ADAM
2 KICK, in his official capacity as Skamania
3 County Prosecuting Attorney, JASON
4 CUMMINGS, in his official capacity as
5 Snohomish County Prosecuting Attorney,
6 ERIKA GEORGE, in her official capacity as
7 Stevens County Prosecuting Attorney, JON
8 TUNHEIM, in his official capacity as
9 Thurston County Prosecuting Attorney, DAN
10 BIGELOW, in his official capacity as
11 Wahkiakum County Prosecuting Attorney,
12 GABE ACOSTA, in his official capacity as
13 Walla Walla County Prosecuting Attorney,
14 ERIC RICHEY, in his official capacity as
15 Whatcom County Prosecuting Attorney, and
16 DENIS TRACY, in his official capacity as
17 Whitman County Prosecuting Attorney,

18
19 Defendants.

1 I, Thomas A. Daly, hereby declare as follows:

2 1. I am over the age of eighteen and competent to make this declaration. I make this
3 declaration based on personal knowledge about which I am competent to testify.

4 2. I am the Roman Catholic Bishop of Spokane, Washington. I sincerely believe in
5 the Roman Catholic faith and the teaching of the Roman Catholic Church, including with respect
6 to the Sacrament of Confession.

7 3. As a bishop of the Roman Catholic Church, I have the faculties to, and do, hear the
8 Sacrament of Confession. As the Bishop of Spokane, it is also my responsibility to ensure that the
9 priests incardinated within the Diocese of Spokane adhere to the Church's teaching regarding the
10 Sacrament of Confession, including the sacramental seal. I am charged with the authority to
11 revoke a priest's faculty to hear confession should the priest deviate from Church teaching or
12 violate Canon Law with respect to the sacramental seal.¹

13 4. As taught by the Roman Catholic Church, Jesus Christ, the eternal son of God,
14 became incarnate and was crucified on the Cross in atonement for man's sins. Through baptism,
15 man receives the forgiveness of sins merited by Christ's crucifixion on the Cross, is conformed to
16 the righteousness of God, and receives the gift of eternal life with God.² Upon man's baptism and
17 complete remission of sin, there is no impediment to eternal life with God.³

18 5. Baptism does not, however, eradicate the temporal consequences of sin—including
19 suffering, illness, death, and an inclination toward sin. Man, for his temporal life, must wrestle
20 with these temporal effects of sin, including the inclination toward sin.⁴ Should man give in to the
21 inclination to sin and commit particularly grievous sins, man turns away from God.⁵ Absent
22 repentance and God's forgiveness, those grievous sins—i.e., mortal sins—destroy communion
23 with God and with his Church, exclude man from God's kingdom, and risk consigning man to the
24

26 ¹ Code of Canon Law cc. 974 § 1, 1386 § 1.

27 ² Catechism of the Catholic Church ¶¶ 1987-1995.

28 ³ *Id.* ¶ 1263.

⁴ *Id.* ¶ 1264.

⁵ *Id.* ¶ 1855.

1 eternal death of Hell.⁶ But the Catholic Church teaches that through the Sacrament of Confession,
 2 God “will forgive us our sins and cleanse us from all unrighteousness.”⁷

3 6. The Sacrament of Confession is the only ordinary means by which man receives
 4 forgiveness for the commission of mortal sin after baptism.⁸ The absolution afforded through
 5 confession is thus a continuation of Christ’s mission to forgive sins.⁹ Confession—also known as
 6 the Sacrament of Reconciliation or the Sacrament of Penance—requires the penitent to confess his
 7 sins, express contrition for those sins, and possess the intention to turn away from sin.¹⁰ This
 8 sacrament is both an act of mercy and an act of Church discipline where the priest acts *in persona*
 9 *Christi* (in the person of Christ). In this sacrament, the priest “is equally a judge and a physician
 10 and has been established by God as a minister of divine justice and mercy.”¹¹

11 7. In the Sacrament of Confession, the priest is “a minister of the Church,” must
 12 “adhere faithfully to the doctrine of the magisterium and the norms issued by competent authority,”
 13 can “pos[e] questions ... with prejudice and discretion” to determine a penitent’s culpability in
 14 grave sin, and determine if there is “doubt about the disposition of the penitent.”¹²

15 8. The priest is also charged to “impose salutary and suitable penances in accord with
 16 the quality and number of sins, taking into account the condition of the penitent,” and the penitent
 17 is “obliged to fulfill” this penance.¹³ If the priest provides the penitent absolution, the penitent is
 18 forgiven by God of the sins committed since baptism (or the penitent’s most recent confession), is
 19 reconciled with God and His Church, and stands, once again, without impediment to eternal life
 20 with God.¹⁴

21 9. Although it is the priest who imparts absolution, forgiveness of sins is granted by
 22 God alone.¹⁵ In hearing a penitent’s confession, the priest is acting *in persona Christi capitis*—
 23

24 ⁶ *Id.* ¶ 1861.

⁷ 1 John 1:9.

⁸ Code of Canon Law c. 960 § 1.

⁹ Matthew 9:6.

¹⁰ Code of Canon Law c. 959.

¹¹ *Id.* at c. 978 § 1.

¹² *Id.* at c. 978 § 2; *id.* at cc. 979-980.

¹³ *Id.* at c. 981.

¹⁴ Catechism of the Catholic Church ¶ 1462.

¹⁵ *Id.* ¶ 1441.

1 *i.e.*, in the very person of Jesus Christ. The priest therefore hears the penitent’s confession of sins
 2 *non ut homo, set ut Deus*—*i.e.*, not as man, but as God. And when the priest imparts absolution,
 3 he does so not as man, but as God. The penitent’s confession is therefore a confession of sins *to*
 4 *God*, so much so that the Catholic Church teaches that a priest “simply ‘does not know’ what he
 5 was told during confession, because he did not listen to [the penitent] as a man but, precisely, in
 6 the name of God.”¹⁶

7 10. Given this theological understanding of the sacrament, a penitent’s confession is
 8 protected by the sacramental seal. The sacramental seal “absolutely forbid[s]” a priest from
 9 “betray[ing] in any way a penitent in words or in any manner and for any reason.”¹⁷ The
 10 sacramental seal “prevent[s] the priest from speaking of the content of the confession to the
 11 penitent himself, outside of the sacrament.”¹⁸ That is because the sacramental seal derives from
 12 the very nature of the sacrament itself, instituted by God, and divinely revealed to the Church.¹⁹
 13 And the sacramental seal binds the priest “to the point that he is forbidden to remember voluntarily
 14 the confession and he is obliged to suppress any involuntary recollection of it.”²⁰ Indeed, so
 15 inviolable is the sacramental seal that, “once the sacrament has been celebrated,” not even the
 16 penitent “ha[s] the power to relieve the [the priest] of the obligation of secrecy.”²¹

17 11. The sacramental seal is intrinsic to the sacrament itself. When Jesus Christ gave
 18 Saint Peter the keys to the Kingdom of Heaven, they came with Christ’s power to “bind” and to
 19 “loose”—a power that includes adjudicating and forgiving sins.²² With that power came the
 20 obligation to keep secret confessed sins.

21 12. Priests are obligated to defend the sacramental seal, if necessary, *usque ad*
 22 *sanguinis effusionem*—*i.e.*, through the shedding of blood. Any priest “who directly violates the
 23

24 ¹⁶ *Note of the Apostolic Penitentiary on the Importance of the Internal Forum and the Inviolability of the*
 25 *Sacramental Seal* (June 29, 2019).

26 ¹⁷ Code of Canon Law c. 983 § 1.

27 ¹⁸ *Note of the Apostolic Penitentiary, supra* note 13.

28 ¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See Matthew 16:19; see also George Joyce, *Power of the Keys*, in *Catholic Encyclopedia* (8th ed. 1910),
<https://www.newadvent.org/cathen/08631b.htm>.

1 sacramental seal incurs *latae sententiae* excommunication”—i.e., *automatic* excommunication—
 2 risking eternal damnation.²³

3 13. The penalty of automatic excommunication is applied to offenses under Canon Law
 4 that threaten or contradict the Church’s unity and theological teaching, and include, in addition to
 5 violation of the sacramental seal, apostasy, heresy, schism, or desecration of the Eucharist.²⁴ And
 6 given the threat posed by such conduct to the unity and theological teaching of the Church, *a latae*
 7 *sententiae* excommunication is “reserved to the Apostolic See,” meaning that only the Pope can
 8 lift it.²⁵

9 14. In 2002, the United States Conference of Catholic Bishops (“USCCB”) adopted the
 10 *Charter for the Protection of Children and Young People* in direct response to the revelations of
 11 clergy sexual abuse within the Church.²⁶ The *Charter* provides a range of procedures to address
 12 sexual abuse allegations, reconciliation and healing, transparency, accountability, and prevention.

13 15. Consistent with the *Charter*, the Church in the United States established the
 14 Committee for the Protection of Children and Young People along with its Secretariat of Child
 15 and Youth Protection. The Church also established a National Review Board—an advisory board
 16 of male and female lay people designed to help the USCCB prevent the sexual abuse of minors.²⁷
 17 The USCCB now publishes annually the results of audits of all U.S. dioceses conducted by an
 18 independent, outside firm.²⁸

19 16. The Diocese of Spokane has cooperated fully in the Church’s response to combat
 20 clergy sexual abuse. The Diocese of Spokane received an on-site audit in 2023.

21 17. Given the intrusion on the sacramental seal and my sincerely held religious belief
 22 in the teaching of the Roman Catholic Church regarding the sacramental seal, neither I nor the
 23

24 ²³ Code of Canon Law c. 1386 § 1.

25 ²⁴ *Id.* at cc. 1364, 1370, 1382, 1386.

26 ²⁵ *Id.*

27 ²⁶ *Charter for the Protection of Children and Young People*, U.S. Conf. of Catholic Bishops,
 28 <https://www.usccb.org/offices/child-and-youth-protection/charter-protection-children-and-young-people> (last visited
 June 5, 2025).

²⁷ *Protection of Children & Young People*, U.S. Conf. of Catholic Bishops,
<https://www.usccb.org/committees/protection-children-young-people> (last visited June 5, 2025).

²⁸ *Audits*, U.S. Conf. of Catholic Bishops, <https://www.usccb.org/offices/child-and-youth-protection/audits> (last
 visited June 5, 2025).

1 priests within my dioceses will comply with the amendments to RCW § 26.44.030 effected by
 2 Senate Bill 5375 with respect to any information that I learn solely through the Sacrament of
 3 Confession.

4 18. Despite my commitment, and the commitment of the priests within my diocese, to
 5 uphold the sacramental seal despite the amendments to RCW § 26.44.030, I understand that certain
 6 faithful within my diocese are going to be concerned that RCW § 26.44.030 requires priests to
 7 report to law enforcement or other state authorities information disclosed during confession, even
 8 if unrelated to child abuse or neglect. The faithful in my diocese include, for example, recent
 9 immigrants afraid of deportation. RCW § 26.44.030 as amended by Senate Bill 5375 could induce
 10 them not to seek the Sacrament of Confession for fear that priests will be required to report them
 11 to the immigration authorities. Such fear among the faithful will interfere with my pastoral duties,
 12 and the pastoral duties of the priests in my diocese, impeding my and the Church's mission to
 13 reconcile sinners to God and His Church, and save souls.

14 19. Catholic priests in the Diocese of Spokane are already required to—and do—report
 15 child abuse and neglect when learned outside the Sacrament of Confession.

16 20. Consistent with the Roman Catholic Church's efforts to eradicate the societal
 17 scourge of child abuse, the Diocese of Spokane has adopted and implemented policies that go
 18 further in the protection of children than the current requirements of Washington law on reporting
 19 child abuse and neglect. Among the many requirements of those policies are the reporting to
 20 proper law enforcement agencies or the department of children, youth, and families whenever
 21 church personnel—defined to include clergy and lay faithful working for the diocese, its parishes,
 22 schools, or agencies—have reasonable cause to believe child abuse or neglect has occurred.²⁹ That
 23 is a reporting obligation broader in scope than Washington law currently requires and includes
 24 mandatory reporting when a priest learns about suspected abuse or neglect through non-
 25 sacramental counsel. The sole exception to this self-imposed reporting requirement is information
 26

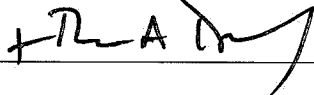
27
 28 ²⁹ *Administrative Policies/Procedures: Prevention, Education, and Reporting of Abuse*, Diocese of Spokane (Nov. 2021), <https://files.ecatholic.com/6397/documents/2021/11/The%20Duty%20to%20Report.pdf?t=1637774089000>.

1 learned by a priest *only* in the confessional and thus protected by the sacramental confessional seal.
 2 I, and the priests within the Diocese of Spokane, adhere to these policies.


3 21. Moreover, because absolution given by a priest requires true contrition for all
 4 confessed sins, I, and the priests within the Diocese of Spokane to whom are confessed sins of
 5 child abuse or neglect by the penitent, could counsel the penitent to self-report and obtain the
 6 necessary temporal intervention and help. I, and the priests within the Diocese of Spokane who
 7 suspect based on what is disclosed during confession that the penitent is suffering from abuse or
 8 neglect, the penitent has engaged in abuse or neglect, or some third party has engaged in abuse or
 9 neglect, could invite the penitent for counseling outside of the Sacrament of Confession. If the
 10 penitent were to agree to such counseling and I or a priest within the Diocese of Spokane were to
 11 learn information in that non-sacramental counseling providing reasonable cause to believe abuse
 12 or neglect has been committed, I or the priest is obligated to report that suspected abuse or neglect
 13 to proper law enforcement agencies or the department of children, youth, and families.

14 * * *

15 I declare under penalty of perjury that the foregoing is true and correct.

16  _____

17 Thomas A. Daly

18 EXECUTED this 5th day of June, 2025, at , Washington.